

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

**Petition of Qwest Corporation for
Forbearance From Enforcement of the
Commission's ARMIS and 492A Reporting
Requirements Pursuant to 47 U.S.C. § 160(c)**

WC Docket No. 07-204

**SPRINT NEXTEL CORPORATION'S COMMENTS IN OPPOSITION
TO QWEST CORPORATION'S PETITION FOR FORBEARANCE
FROM ARMIS AND 492A REPORTING REQUIREMENTS**

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Sprint Nextel Corporation ("Sprint Nextel"), in response to the Public Notice issued by the Federal Communications Commission ("Commission" or "FCC") in the above-captioned proceeding,¹ hereby respectfully submits its Comments in Opposition to Qwest Corporation's ("Qwest") petition seeking forbearance from enforcement of the FCC's Automated Reporting Management Information System ("ARMIS") and 492A reporting requirements.

I. INTRODUCTION AND SUMMARY

On September 13, 2007, Qwest filed a petition asking the Commission to forbear from enforcing the obligation to file each category of the ARMIS reports as well as from

¹ Federal Communications Commission Public Notice, "Pleading Cycle Established for Qwest Corporation Petition Seeking Forbearance from Enforcement of Certain ARMIS and 492A Reporting Requirements," WC Docket No. 07-204, DA 07-3949. The Commission's Public Notice, released September 20, 2007, called for the filing of initial comments by October 22, 2007 with reply comments due by November 6, 2007. Subsequently, at the request of the Washington Utilities and Transportation Commission ("WUTC"), the FCC extended the comment cycle to December 6, 2007 for initial comments and December 21, 2007 for reply comments. WC Docket 07-204, DA 07-4329, Order revising filing dates (released October 18, 2007). Qwest filed a corrected version of its petition on September 27, 2007 to correct a typographical error in the caption. It then filed another corrected version to provide signed signature and certificate pages that had been omitted from the first corrected version.

its 492A reporting requirement.² Specifically, Qwest seeks forbearance from Commission regulations directing it to submit the following reports:

- ARMIS Report 43-01 (Annual Summary)
- ARMIS Report 43-02 (Uniform System of Accounts (USOA) Report)
- ARMIS Report 43-03 (Joint Cost Report)
- ARMIS Report 43-04 (Separations and Access Report)
- ARMIS Report 43-05 (Service Quality Report)
- ARMIS Report 43-06 (Customer Satisfaction Report)
- ARMIS Report 43-07 (Infrastructure Report)
- ARMIS Report 43-08 (Operating Data Report) (except for Table III, columns FC, FD, and FE)³
- ARMIS Report 495A (Forecast of Investment Usage)
- ARMIS Report 495B (Actual Usage of Investment)
- 492A Report (Rate-of-Return Monitoring Report).⁴

Qwest's request for forbearance from each and every component of the Commission's ARMIS reports is even more sweeping than AT&T's recent petitions requesting forbearance from selected ARMIS reporting requirements⁵ and from the

² Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c), WC Docket No. 07-2-4 (filed September 13, 2007) ("Qwest Petition").

³ ARMIS Report 43-08, Table III, columns FC, FD and FE captures data related to business line counts in connection with the Commission's non-impairment thresholds established in the *Triennial Review Remand Order. In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of the Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533, 2595 at ¶ 105 (2005).

⁴ Qwest Petition at 7-8 (Corrected version). The regulations from which Qwest seeks forbearance are found at 47 C.F.R. §§ 43.21(a), 43.21(d)-(k), 65.1(b)(2), 65.600(a), and 65.600(d).

⁵ *Petition of AT&T for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain of the Commission's ARMIS Reporting Requirements*, WC Docket No. 07-139, filed June 8, 2007 ("AT&T ARMIS Forbearance Petition"). Public Notice, DA 07-332, released July 20, 2007.

Commission's cost assignment rules.⁶ Sprint Nextel urges the Commission to deny Qwest's petition in its entirety on both procedural and substantive grounds. As a procedural matter, a petition for forbearance is not the appropriate vehicle to implement dramatic changes in the ARMIS reporting requirements, which generally apply to incumbent local exchange carriers ("ILEC") subject to price cap regulation.⁷ Moreover, Qwest has failed to sufficiently demonstrate that forbearance from these reporting requirements satisfies each element of the statutory forbearance criteria enumerated in 47 U.S.C. § 160(a) and its petition should therefore be denied. Given the Commission's recent decisions to forbear from competitive safeguards despite the ILECs' continued dominance over bottleneck facilities,⁸ it is even more imperative that it continue to maintain these reports as safeguards against those ILECs' anticompetitive exploitation of their dominant status.

II. A RULEMAKING, NOT A PETITION FOR FORBEARANCE, IS THE PROPER MECHANISM TO REVIEW THE APPROPRIATENESS OF THE CONTINUED APPLICABILITY OF THE ARMIS AND 492A REPORTING REQUIREMENTS

The Commission implemented the ARMIS reporting requirements in 1987 in the aftermath of the AT&T divestiture to collect financial and operational data from the

⁶ *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket No. 07-21, filed January 25, 2007.

⁷ *Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67 and 69 of the FCC's Rules)*, CC Docket No. 86-182, Report and Order, 2 FCC Rcd 5770 (1987) (*ARMIS Order*), modified on recon., 3 FCC Rcd 6375 (1988) (*ARMIS Reconsideration Order*).

⁸ See *In the Matters of Petition of AT&T Inc. and BellSouth Corporation for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to its Broadband Services*, WC Docket No. 06-125, Memorandum Opinion and Order, FCC 07-180 (rel. October 12, 2007) ("*AT&T Forbearance Order*"); *In the Matters of Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) from Application of Computer Inquiry and Certain Title II Common-Carriage Requirements and Petition of Frontier and Citizens ILECs for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules With Respect to Their Broadband Services*, WC Docket No. 06-147, FCC 07-184 (rel. October 24, 2007).

largest ILECs,⁹ which included Qwest's corporate predecessors.¹⁰ The Commission adopted the ARMIS reporting requirements to establish an automated system for collecting, in a logical and consistent manner, the financial and operating data it required to administer its rules relating to accounts, joint costs, jurisdictional separations, rate base disallowance and access charges.¹¹ The ARMIS reports reflect the ILECs' cost and other data recorded on their regulatory accounting books that are prepared and maintained according to the FCC's Uniform System of Accounts ("USOA") rules, as codified at 47 C.F.R. §§ 32, 36, 64 and 69.¹²

While one purpose of this automated reporting system, as Qwest notes, was to facilitate the timely and efficient analysis of revenue requirements and rates of return, the Commission has also acknowledged that the reports enhance its oversight functions and permit it to quantify the effects of its policies.¹³ In particular, the Commission has noted that the data captured by these reports allow it to determine whether its initiatives and policies are functioning as intended and to adjust its rules and procedures accordingly.¹⁴

The Commission added additional ARMIS reports in 1991 to collect service quality and network infrastructure information from ILECs subject to regulation under price caps rather than under a rate-of-return framework.¹⁵ Similarly, the Commission adopted the 492 reporting requirement to monitor and enforce maximum rate-of-return

⁹ See *FCC ARMIS Homepage*.

¹⁰ Qwest Petition at 3. These entities included Mountain Bell, Northwestern Bell and Pacific Northwest Bell, which ultimately became US WEST Communications, Inc. *Id.*

¹¹ *ARMIS Order* at ¶ 1.

¹² *ARMIS Order* at ¶¶ 3-4; *ARMIS Recon Order* at ¶ 5; *In the Matter of Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786, at ¶¶ 34, 383 (1990) ("*Price Cap Order*").

¹³ *ARMIS Order* at ¶ 1.

¹⁴ *Id.* at ¶ 34.

¹⁵ *In the Matter of Policy and Rules Concerning Rates for Dominant Carriers*, Memorandum Opinion and Order, 6 FCC Rcd 2974, 2975-76 at ¶ 3 (1991).

levels and subsequently modified the report, renaming it the 492A report, to accommodate the introduction of price cap regulation for ILECs.¹⁶

In addition to collecting company-wide accounting information, the ARMIS reports also contain separate results for each of several categories of service, including interstate special access.¹⁷ The data can be used to calculate the rate of return achieved from the provision of each service category, representing the relative profit each individual service generated – a key indicator of the success – or failure – of Commission policies governing special access services.

The Commission adopted the ARMIS and 492A reporting requirements after careful deliberation and upon the compilation of a full evidentiary record in the context of several rulemaking proceedings over the course of several years. Qwest asks the Commission, in one fell swoop, to eliminate valuable regulatory tools to track fundamental financial and operating indicators upon which both the Commission and the state public utility commissions rely to fulfill their statutory obligations. Given the significance of these reporting requirements, any proposed modifications should only be addressed through a comprehensive and industry-wide rulemaking – not through a petition for forbearance that impacts only a single company, particularly when the petition raises matters that affect obligations imposed on all ILECs.¹⁸ A broader rulemaking proceeding would permit the Commission to fully examine the implications of changes to its reporting requirements on all stakeholders – consumers, regulators and competitors.

¹⁶ *In the Matter of Amendment of Part 65, Interstate Rate of Return Prescription: Procedures and Methodologies to Establish Reporting Requirements*, Report and Order, 1 FCC Rcd 952, 957 at ¶ 51 (1986); *Price Cap Order*, 5 FCC Rcd 6786, 6832-33 at ¶¶ 373, 380 (1990).

¹⁷ *Price Cap Order*, 5 FCC Rcd 6788 at ¶¶ 201-203; *ARMIS Recon Order* at ¶ 18.

¹⁸ *Price Cap Order*, 5 FCC Rcd 6788 at ¶¶ 381-382.

A. A Federal-State Joint Board Review Is an Appropriate Forum to Consider Changes in the ARMIS and 492A Reporting Requirements

Both federal and state regulators rely on the ARMIS Reports to access and analyze industry data to monitor competitive market conditions and to further regulatory objectives. Qwest's forbearance petition directly impacts the continued availability of this data for regulatory purposes at both the state and federal level. The Commission and the states therefore have a strong interest in collaborating on a matter that has significant implications for both interstate and intrastate regulation and oversight.

The Commission has taken this course in the past to address issues that affect the interstate and intrastate jurisdictions. For instance, it has established the Federal-State Joint Board on Jurisdictional Separations to examine issues arising from the separation of revenues and costs between the interstate and intrastate jurisdictions.¹⁹ It initiated the Federal-State Joint Conference on Accounting Issues "to ensure that regulatory accounting data and related information filed by carriers are adequate, truthful and thorough."²⁰ Consistent with this practice, the Commission could convene a specially formed Federal-State Joint Board to evaluate whether changes are needed to the ARMIS and 492A Reporting requirements that would be applicable across-the-board to all reporting carriers. Such an approach would be vastly superior to implementing significant changes to these reporting requirements or eliminating them entirely in a piecemeal fashion in the context of a single carrier's forbearance petition.

¹⁹ In 2006, the Commission extended the jurisdictional separations freeze and issued a further notice of proposed rulemaking to consider additional reforms of the jurisdictional separations process. *Jurisdictional Separations and Referral to the Federal-State Joint Board*, Order and Further Notice of Proposed Rulemaking, CC Docket No. 80-286, 21 FCC Rcd 5516 (2006) ("*Separations Freeze FNPRM*").

²⁰ *Federal-State Joint Conference on Accounting Issues*, WC Docket No. 02-269, Order, 17 FCC Rcd 17025, at ¶ 1 (2002).

B. The Commission has Several Pending Proceedings that Depend on Data Found in the ARMIS and 492A Reports

The Commission has a number of pending proceedings that depend on certain information contained in the ARMIS and 492A reports. Granting Qwest's forbearance petition and eliminating its ARMIS and 492A reporting requirements would significantly impede the Commission's review of the critical issues under consideration in these broader rulemaking proceedings.

For instance, the Commission is currently examining the effectiveness of its special access pricing flexibility rules and evaluating the need to modify or repeal them.²¹ This proceeding is undertaking a thorough examination of the exorbitant prices that the ILECs, including Qwest, are charging under current price cap and pricing flexibility rules. Excessive earnings are a prime indication of market failure and of unjust and unreasonable rates. The financial information found in the ARMIS reports and the rate-of-return information found in the 492A report is an essential and independent source of information needed to corroborate the information filed by parties in the special access rulemaking. The excessive rates-of-return that Qwest and the other largest Bell Operating Companies ("BOCs") have achieved on special access over the past several years since the introduction of the pricing flexibility rules have been calculated using data from the ARMIS and 492A reports.²² If Qwest is relieved of the obligation to file this data, the Commission and competitive carriers will have no ability to evaluate the magnitude of these excessive special access earnings and thereby detect anticompetitive

²¹ *Special Access Rates for Price Cap Local Exchange Carriers, AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994, 1995 at ¶ 1 (2005) (hereinafter *Special Access NPRM*).

²² These returns are based on data set forth in FCC Report 43-01, Table 1 Cost and Revenue, Column(s) Special Access, Row 1915 Net Revenue divided by Row 1010 Average Net Investment.

pricing behavior in the special access market. Qwest's exercise of its dominant market power in the provision of special access services will be permitted to continue unchecked.

Additionally, the Commission has indicated that its comprehensive review and reform of the intercarrier compensation regime requires the continued availability of the information reported in the ARMIS reports.²³ Thus, it would be premature and counterproductive for the Commission to grant Qwest's petition for forbearance from the ARMIS and 492A reporting requirements while these proceedings, which rely on such data, remain pending. Such an outcome would compromise the Commission's ability to render a fully informed decision in these other important proceedings.

Recently, the Commission reaffirmed the importance and necessity of the ARMIS reports as part of its review of BOC regulation, including Qwest, after the sunset of § 272 affiliate requirements.²⁴ In that decision, the FCC established a new framework to govern the BOCs' provision of in-region, interexchange services by eliminating the requirement that they provide these services through a separate affiliate in order to receive streamlined regulatory treatment as a non-dominant carrier.²⁵ In doing so, the Commission retained several existing legal obligations applicable to the BOCs, including the Commission's accounting and cost allocation rules and related reporting requirements

²³ *2000 Biennial Regulatory Regime – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase II, Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Rulemaking*, Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286; Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, 80-286, 16 FCC Rcd 19913, 19967-68 at ¶¶ 148-149 (2001) (Phase II Report and Order) (“The Commission’s ability to monitor and evaluate local transport access rates would be greatly hindered if it could not identify and track local transport costs separately from switched access costs.”).

²⁴ *In the Matters of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, *2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*, CC Docket No. 00-175, *Petition of AT&T for Forbearance Under 47 U.S.C. § 160(c) with Regard for In-Region, Interexchange Services*, WC Docket No. 06-120, Report and Order and Memorandum Opinion and Order, FCC 07-159 (rel. August 31, 2007) (“*Section 272 Sunset Order*”).

²⁵ *Id.* at ¶ 1.

under ARMIS, and adopted certain additional safeguards to mitigate the risks of anticompetitive conduct from the removal of the separate affiliate requirement.²⁶ In particular, the Commission adopted a targeted imputation requirement for any access services that the BOCs' incumbent LEC affiliates provide to their in-region, long distance operations and directed them to revise their cost allocation manuals to include a description of how their provision of access services will comply with the affiliate transactions rules.²⁷ To facilitate the transparency of the BOCs' imputation of in-region, interexchange costs, the Commission ordered them to include the imputation charges debited to the applicable Part 32 account in its ARMIS filings "accompanied by an explanatory footnote for each line item identifying the amount imputed."²⁸ The Commission noted that this requirement should "pose at most a minimal additional burden to the carriers because they already record imputation charges in a subsidiary record account for revenues derived from regulated services treated as nonregulated for federal accounting purposes, and *already must file ARMIS reports*."²⁹ Just two weeks after this Commission directive reinforcing the need to file ARMIS reports and factoring in these reporting requirements as an important safeguard in its decision to eliminate the § 272 separate affiliate requirements, Qwest filed this forbearance petition seeking relief from the obligation to file each and every ARMIS report. The Commission should reject

²⁶ *Id.* at ¶ 90. As additional safeguards, the Commission adopted i) special access performance metrics to prevent non-price discrimination in the provision of special access services; ii) imputation requirements to help monitor BOC provisioning of these services for possible price discrimination; iii) the offering of calling plans to protect residential customers who make few interstate, long distance calls; and iv) providing subscribers monthly usage information to enable them to make cost-effective decisions concerning alternative long distance plans. *Id.* at ¶ 95.

²⁷ *Id.* at ¶ 102.

²⁸ *Id.* at ¶ 104. The order indicated that these data values with explanatory footnotes are to be provided in FCC Report 43-01, ARMIS Annual Summary Report, table I, row 1045, columns (b) and (c); FCC Report 43-02, ARMIS USOA Report, table I-1, row 5280, column (b); and in FCC Report 43-03, ARMIS Joint Cost Report, table I, row 5280, columns (b), (d), and (j).

²⁹ *Id.* at ¶¶ 104-105 [Emphasis added].

Qwest's attempt to bypass the conditions it imposed in its *Section 272 Separate Affiliate Order* and deny its forbearance request.

III. QWEST'S PETITION FAILS TO SATISFY SECTION 10'S REQUIREMENTS FOR FORBEARANCE

Qwest bears a substantial burden to demonstrate that it meets each element of the statutory criteria to obtain forbearance from Commission regulations. Section 10(a) of the Act provides that the Commission may not grant forbearance from any Commission regulation or statutory provision until it finds that three conditions have been met. The Commission must make affirmative determinations that (1) enforcement of the Act's provisions or the Commission's regulations is not necessary to ensure that the telecommunications carrier's charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement of the provision or regulation is not necessary for the protection of consumers; and (3) forbearance from applying the provision or regulation is consistent with the public interest.³⁰ Section 10(b) also requires the Commission, as part of its public interest determination, to examine whether forbearance from enforcing the provision or regulation at issue will promote competitive market conditions and enhance competition among telecommunications providers.³¹

The Commission must deny a petition for forbearance if it determines that any one of the three elements of the section 10(a) standard is not met.³² As described in

³⁰ 47 U.S.C. § 160(a).

³¹ 47 U.S.C. § 160(b).

³² *Cellular Telecommunications & Internet Association v. Federal Communications Comm'n*, 330 F.3d 502, 509 (D.C. Cir. 2003).

Section II.B *supra*, and, as discussed in more detail below, Qwest has failed to satisfy any of the three components of the statutory forbearance standard.

A. Qwest Has Failed to Demonstrate That Compliance with the ARMIS and 492A Reporting Requirements Is Not Necessary to Ensure Just, Reasonable and Non-Discriminatory Charges and Practices

Qwest's argument that the ARMIS and 492A reporting requirements are not needed for an analysis of its costs and rate structure to ensure that its rates and practices are just, reasonable and not unreasonably discriminatory is simply wrong, particularly given the Commission's recent forbearance and pricing flexibility decisions.³³ Qwest ignores that the reports do contain information that serves as a barometer on the effectiveness of the Commission's deregulatory pricing policies.

The Commission has indicated that ARMIS data serves additional and broader purposes than the mere regulation and enforcement of rate-of-return thresholds.³⁴ ARMIS is simply a series of standardized reporting forms and an electronic interface to facilitate the reporting of the accounting results produced by applying the FCC accounting rules (47 C.F.R. Parts 32, 36, 64 and 69) to the BOCs' revenues, expenses and investments.³⁵ Such data offer regulators, and any interested business or consumer, the ability to analyze the BOCs' earning levels by examining their regulatory accounting data.

1. The Commission Needs the ARMIS and 492A Reporting Requirements to Evaluate the Effectiveness of its Price Cap, Pricing Flexibility and Forbearance Decisions

³³ Qwest's Petition at 5.

³⁴ *Price Cap Order* at ¶ 378.

³⁵ *ARMIS Order* at ¶¶ 3-4.

Even under price cap regulation, the Commission must continue to collect cost information from the ILECs, including Qwest, because the costs they incurred to provide regulated services formed the basis for setting the initial rates under price caps.³⁶ Any subsequent adjustments to the price cap index levels have simply been the mechanism the Commission has used to attempt to maintain rates at cost-based levels. In this regard, the Commission acknowledged that:

[a]lthough price cap regulation diminished the direct link between changes in allocated accounting costs and changes in prices, it did not sever the connection between accounting costs and prices entirely. Rather, because the rates to which the price cap formulae were originally applied resulted from rate-of-return regulation, overall price cap LEC interstate revenue levels continued generally to reflect the accounting and cost allocation rules used to develop access charges.³⁷

Changes in regulation and technology over the past several years require price caps to be reinitialized, which requires the Commission to determine what price cap indices will yield reasonable earning levels in the current market. The ARMIS and 492A reporting requirements will assist the Commission in making this calculation. The Commission has also proposed using cost data to help determine how it should reform the interstate special access services market and has noted that rate-of-return data are useful in its analysis of special access pricing.³⁸

Additionally, several of the ARMIS reports, including 43-01, 43-02, 43-04, and 43-08, are useful in determining Qwest's productivity factor, or as it is commonly known - the "X-Factor." This factor is a critical component of the price cap regime because it represents the extent to which the overall LEC productivity growth rate is expected to exceed the productivity growth rate of the economy as a whole. Including the

³⁶ *Price Cap Order* at ¶ 5-20.

³⁷ *Special Access NPRM*, 20 FCC Rcd at 1999, ¶ 12.

³⁸ *Id.* at 2005-06, 2016, ¶¶ 27-29, 59-64.

productivity factor helps ensure that price changes over time reflect overall ILEC productivity gains.

Furthermore, under price cap regulation, the Commission must have access to the cost data contained in the ARMIS reports to evaluate any price cap increases that Qwest, as well as other ILECs, may seek based on exogenous costs. Exogenous costs typically represent costs an ILEC incurs due to administrative, legislative, or judicial action beyond an ILEC's control, and ILECs are permitted to adjust their price caps to reflect any such costs they incur.³⁹ While exogenous cost adjustments to price caps result in changes to a carrier's price cap indices, the amount of the adjustment is based on the carrier's actual costs. In most cases, the Commission uses the cost information generated in the ARMIS reports to evaluate exogenous adjustment claims based on actual cost changes.⁴⁰ If Qwest's forbearance petition is granted, this information will no longer be available or easily accessible to the public.⁴¹

Moreover, the Commission will need ARMIS data not only to reinitialize price caps, but also to detect anticompetitive pricing. Qwest claims that price cap regulation renders the ARMIS and 492A reporting requirements obsolete because they are no longer used to set its rates. These reports, however, represent critical tools for the Commission to track how well price cap regulation is maintaining Qwest's rates at just and reasonable levels. Without publicly available cost data, Qwest would have the freedom to, for instance, cross-subsidize its non-regulated services by charging supra-competitive rates

³⁹ *1990 Price Caps Order*, 5 FCC Rcd at 6806 at ¶ 166.

⁴⁰ *Phase II Report and Order*, 16 FCC Rcd at 19929-30 at ¶ 46.

⁴¹ Since other parties are also able to propose exogenous adjustments that should be made, the lack of ARMIS data would make it more difficult, if not impossible, for those parties to determine what these exogenous changes should be.

for its regulated services. Such behavior would be impossible to detect without the cost information contained in selected ARMIS reports.

2. The ARMIS and 492A Reports Provide Critical Cost Information Needed for State Regulatory Oversight

The elimination of the ARMIS and 492A reporting requirements for Qwest would remove a key source of information relating to revenues, costs, network infrastructure investment and service quality on a state-specific basis, which is used by state commissions to ensure compliance with state statutes and regulations. For many states, the ARMIS reports are the only publicly available source of state-level cost data. States use ARMIS report data for a number of purposes, including assessing the state of local market competition, determining intrastate universal service support, examining service quality levels and evaluating unbundled network element (“UNE”) rates.⁴² For example, in its request for an extension in the comment cycle for this proceeding, the Washington Utilities and Transportation Commission (“WUTC”) noted that it relies on the ARMIS reports in carrying out several of its statutory responsibilities in connection with its regulatory oversight over telecommunications utilities.⁴³ Many states have also eliminated state-specific reporting requirements applicable to the ILECs in reliance on the availability of the ARMIS reports.⁴⁴

States rely on the jurisdictional separations information contained in ARMIS Report 43-04, which shows the separation of the ILEC’s revenues and costs between the interstate and state jurisdictions. The information contained in this report permits states

⁴² *Price Cap Order* at ¶ 369; *ARMIS Recon Order* at ¶¶ 22-25.

⁴³ WUTC’s Request for Extension of Time at 1-2, filed October 12, 2007.

⁴⁴ See, e.g., Reply Comments of the California Public Utilities Commission filed in WC Docket No. 07-139 examining AT&T’s request for forbearance from selected ARMIS reporting requirements.

to evaluate whether ILECs are recovering the same costs in both the interstate and intrastate jurisdictions.⁴⁵ Access to this data is also necessary to evaluate the effectiveness of a state's policies on deregulation and to determine the appropriate state universal service funding levels.

Further, many states rely on state-specific cost data to set total element long-run incremental cost ("TELRIC") rates for UNEs.⁴⁶ Without access to the cost data in the ARMIS reports, UNE charges could be overstated, which would adversely impact competitors and consumers.

3. The Commission Needs the ARMIS and 492A Reports to Evaluate the Magnitude of the Special Access Market Failure

When it adopted the ARMIS reporting requirements, the Commission noted that the data collected in the reports would be useful in determining whether its policies were functioning as intended and, if not, whether any corrective adjustments to those policies were needed.⁴⁷ Along those lines, the ARMIS data has illuminated the market failure evident in the provision of special access services – a critical input to the provision of broadband connectivity services.⁴⁸ Despite the fact that special access services are an essential component of broadband networks, competition in the special access market is, at best, minimal.⁴⁹ To the extent competition exists at all, it is limited to the offering of

⁴⁵ *Separations Freeze FNRPM*, 21 FCC Rcd at 5517 at ¶ 2.

⁴⁶ *Phase II Report and Order*, 16 FCC Rcd at 19932-33 at ¶¶ 49-50.

⁴⁷ *ARMIS Order* at ¶ 1.

⁴⁸ Special access services are leased lines that provide the "last mile" connections and local transport links that carriers use to provide telecommunications and information services. Special access refers to dedicated circuits that connect two defined points within or on a carrier's network.

⁴⁹ See generally, Government Accountability Office Report to the Chairman, Committee on Government Reform, House of Representatives, "*FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in the Dedicated Access Services*," November 2006 ("*GAO Special Access Report*").

highest capacity special access circuits in portions of urban business centers.⁵⁰ In reality, the provision of special access is the all but exclusive domain of the large BOCs – AT&T, Verizon and Qwest.⁵¹ These ILECs near-monopoly market shares in the provision of special access services would not necessarily be a problem had the Commission maintained effective pricing discipline of their special access rates where there is insufficient competitive pressure to impose that discipline. The Commission, however, issued a decision in 1999 in which it decided to deregulate an ILEC’s special access service offerings in any metropolitan statistical area (“MSA”) where the ILEC could show that certain so-called competitive triggers had been met.⁵² But these triggers were not based on the number of competitors actually providing special access services to the buildings and cell sites in a particular MSA. Rather, they were based solely on the number of carriers that had simply collocated at some large wire centers in the MSA – whether or not those collocations had competitive facilities that could or would be used for the provision of competitive special access services. The FCC believed that this would be “a good predictor that competitors had made significant, irreversible sunk investments in facilities, and indicated the likelihood that a competitor could eventually extend its own network to reach its customers.”⁵³ Thus, the FCC believed, “sufficient

⁵⁰ *Id.* at 19 (determining that less than six percent of buildings with demand for DS-1 level or higher are served by a fiber-based competitor, with competition being heaviest for those buildings with the highest levels of demand).

⁵¹ The GAO Special Access Report examined that state of special access competition in selected MSAs, including several where Qwest is the incumbent provider. In Minneapolis, for example, the report showed that only 5.7% of buildings had a competitive alternative for special access. In Seattle, there were only 3.8% of buildings with competitive alternatives while Phoenix had just 3.7%. GAO Special Access Report, Table 2, “Percentage of Buildings with Fiber-based Competitive Alternatives by Demand (July 2006).

⁵² *Access Charge Reform*, CC Docket Nos. 96-262, 94-1, 98-63, 98-157, *Fifth Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 14221 (1999) (*Pricing Flexibility Order*), *aff’d* *Worldcom v. FCC*, 283 F.3d 449 (D.C. Cir. 2001). Although special access services are still subject to Title II of the Communications Act, under the deregulation the Commission permitted, the ILECs have the discretion to price their special access services as they see fit.

⁵³ GAO Report at 3; *Pricing Flexibility Order*, 14 FCC Rcd at 14261.

sunk investments of this sort would constrain monopoly behavior” by those ILECs whose special access services had been deregulated.⁵⁴

Since the FCC issued its *Pricing Flexibility Order*, the BOCs have been granted special access deregulation in most of the major MSAs. Furthermore, the Commission has granted several carriers’ requests for forbearance from pricing regulation of higher-capacity special access services.⁵⁵ Meaningful competition in the special access market, however, has not materialized. Thus, there are no competitive constraints on the BOC’s pricing behavior. Instead of being forced by the market to price their special access services at or near marginal costs as occurs in a truly competitive market, they have used their pricing flexibility to extract monopoly rents from their competitors in the wireless, long distance and Internet broadband access markets. Over the last several years, the BOCs, including Qwest, have earned astonishingly excessive returns from their provision of special access services, which completely contradict the notion that the special access market is competitive. In 2006, for example, Qwest earned an astounding rate of return of 132% on its special access services.⁵⁶ This figure was calculated from the data in the

⁵⁴ *Id.*

⁵⁵ The Commission has forbore from requiring AT&T, Verizon, Embarq, Frontier and Citizens to file tariffs and cost support for their higher-capacity special access services, such as Ethernet, OCNs and packet-switched services. *In the Matters of Petition of AT&T Inc. and BellSouth Corporation for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to its Broadband Services*, WC Docket No. 06-125, Memorandum Opinion and Order, FCC 07-180 (rel. October 12, 2007) (“AT&T Forbearance Order”); *In the Matters of Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) from Application of Computer Inquiry and Certain Title II Common-Carriage Requirements and Petition of Frontier and Citizens ILECs for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules With Respect to Their Broadband Services*, WC Docket No. 06-147, FCC 07-184 (rel. October 24, 2007). Additionally, although Qwest withdrew its petition for forbearance from dominant carrier regulation of its enterprise broadband services on September 11, 2007, it re-filed a nearly identical version on September 12, 2007. The FCC is expected to give Qwest the same enterprise broadband relief it accorded the other ILECs in the decisions noted above.

⁵⁶ See *In the Matter of Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97, Comments of AdHoc Telecommunications Users Committee, Attachment B, “Special Access Overpricing and the U.S. Economy,” Appendix 1 at A-1, prepared by Economics and Technology, Inc. (“ETI”).

FCC's ARMIS Report 43-04, Table 1 for year-end 2006. Comparing this rate of return with the FCC's authorized rate for rate-of-return carriers of 11.25%, which in itself is a healthy profit, it is plain to see that there is no competition keeping Qwest's special access prices in check.⁵⁷

The special access market represents a prime example of where ARMIS data can be used to corroborate evidence of market failure as well as anticompetitive exploitation of that market failure. One of the FCC's original purposes in collecting this data was to monitor the effectiveness of its policies and take corrective steps where necessary. In this case, the FCC should use the ARMIS data to examine the effectiveness of its pricing flexibility and forbearance policies and adapt its regulatory framework to reflect the existing conditions in the special access market. The special access market is not competitive and the availability of the cost data found in the ARMIS reporting requirements remains necessary to ensure that Qwest engages in just, reasonable and non-discriminatory pricing. Thus, the Commission should find that Qwest has not met the first element of the statutory forbearance standard. Clearly, the reporting requirements are necessary to ensure that Qwest's rates continue to be just and reasonable and not unduly discriminatory.

B. Qwest Has Failed to Demonstrate That Compliance with the ARMIS and 492A Reporting Requirements Is Not Necessary to Protect Consumers

Qwest argues that the Commission must find a strong connection between the regulation and the goal of consumer protection to determine that the regulation is

⁵⁷ *Special Access Pricing NPRM*, 20 FCC Rcd at ¶ 35 (noting that "[i]n recent years, the BOCs have earned special access accounting rates of return substantially in excess of the prescribed 11.25% for rate of return ILECs").

necessary for the protection of consumers.⁵⁸ Qwest then purports to analyze each of the ARMIS and 492A reports against this standard and makes a series of unsupported and conclusory statements that the reporting requirements are not necessary to protect consumers.⁵⁹ Contrary to Qwest's contention that none of the ARMIS reports for which it seeks forbearance has a strong connection to consumer protection, the reports demonstrate a definite nexus with consumer protection goals.

Generally, the ARMIS reports can be divided into two main subject areas – accounting reports and service quality/network infrastructure reports.⁶⁰ The information collected under the both of these broad categories advance consumer protection policies.

ARMIS Report 43-05, for example, captures data on the quality of service an ILEC provides to its retail and wholesale customers. One of the tables covers the installation and repair intervals achieved by the reporting carrier for local services provided to both business and residential customers. Another table counts the number of service quality complaints that residential and business customers have raised in both the state and interstate jurisdictions. The information contained in this ARMIS Report is used by several state commissions to monitor and enforce their service quality standards and permits state-by-state comparisons.⁶¹ Moreover, the Commission has recognized that the public disclosure of service quality information functions as an important consumer

⁵⁸ Qwest's Petition at 9, citing *In the Matter of Petition for Forbearance From E911 Accuracy Standards Imposed on Tier III Carriers for Locating Wireless Subscribers Under Rule Section 20.18(h)*, Order, 18 FCC Rcd 24648, 24654 at ¶ 14 (2003).

⁵⁹ Qwest's Petition at 11-15, 17, 19, 21, 23, and 25.

⁶⁰ *ARMIS Order* at ¶¶ 3-4; *Price Cap Order* at ¶ 357.

⁶¹ In WC Docket 07-139, established to consider AT&T's forbearance petition from selected ARMIS reporting requirements, several state commissions filed comments indicating that they rely on the Service Quality Report for their own regulatory purposes and urged the Commission to continue to require it. *See, e.g., Comments of the Public Utility Commission of Texas* at 2-3.

safeguard even in a competitive environment.⁶² There is no other source of nationwide data comparable to the ARMIS Service Quality report; thus, it continues to serve as a key consumer protection indicator.

Similarly, ARMIS Report 43-06 is an annual report on customer satisfaction and reports the percentage of customers who are dissatisfied with various features of the reporting carrier's service. The public availability of this data permits consumers to make informed decisions concerning their choice of a local service provider using this information as a guide.

Additionally, ARMIS Report 43-03, the Joint Cost Report, contains data on the assignment of costs between Qwest's regulated and non-regulated activities. This report remains necessary to protect consumers from the practice of using services that are not competitive to subsidize services that are competitive.⁶³ The data generated in this report takes on even more importance as ILECs such as Qwest venture into new, unregulated lines of business to ensure that consumers of their regulated services are not saddled with these costs.

In short, Qwest has failed to prove that enforcement of these reporting requirements is not needed to protect consumers. Granting forbearance in this instance, given the valuable data that these reports provide to both consumers and regulators, would be inappropriately harmful to consumers.

C. Granting Forbearance in this Matter Would be Contrary to the Public Interest and Would Fail to Advance Competition

⁶² *In the Matter of 2000 Biennial Regulatory Review – Telecommunications Service Quality Reporting Requirements*, Notice of Proposed Rulemaking, CC Docket No. 00-229 at 6 (January 12, 2001).

⁶³ 47 U.S.C. § 254(k) precludes a carrier from engaging in cross-subsidization between regulated and non-regulated services. *Price Cap Order* at ¶ 365.

Qwest contends that forbearance from enforcement of the ARMIS and 492A reporting requirements is consistent with the public interest and would be a pro-competitive step to reduce Qwest's regulatory reporting burdens and associated costs.⁶⁴ Qwest, however, has made absolutely no attempt to quantify the burden that complying with these reporting requirements supposedly imposes and it has failed to show how it is unable to effectively compete because of its ARMIS and 492A reporting obligations.

The ARMIS reports offer an extensive database of publicly available information covering many key facets of an ILEC's business operations.⁶⁵ The availability of this information is crucial to monitor the effectiveness of the Commission's deregulatory policies in the marketplace and detect where market failures exist. It also allows consumers to have open access to information so that they can make informed choices among service providers based on such criteria as service quality and customer satisfaction. Qwest suggests that if the Commission determines that information contained in the current ARMIS and 492A reports is needed for the Commission's performance of its regulatory duties, then it should collect the information from all carriers as part of an expanded Form 477.⁶⁶ While the Form 477 reports are valuable, they are not an adequate substitute for the ARMIS reports. The Form 477s are considered proprietary to each filing company and are not publicly available for inspection. Information from the Form 477s is reported in aggregate form for such Commission publications as the *Local Telephone Competition and High Speed Services for Internet Access*, but the underlying data for each company are not accessible to the public.

⁶⁴ Qwest Petition at 13.

⁶⁵ *ARMIS Recon Order* at ¶ 31.

⁶⁶ Qwest Petition at 6.

Additionally, even if the Commission granted Qwest's forbearance petition, it would still have to maintain its cost data under the FCC's accounting rules (47 C.F.R. Parts 32, 36, 64 and 69) and it would therefore have the data to continue to populate the ARMIS and 492A reports. As Qwest acknowledges, it will remain subject to the Commission's Part 64 rules, including the requirement to file and update a cost allocation manual ("CAM") and to undergo a biennial audit examining its affiliate transactions and its cost assignments between regulated and non-regulated activities.⁶⁷ Because Qwest would still be required to maintain its books according to the FCC's accounting rules and to have them available for inspection upon request, relieving Qwest of the obligation to file the ARMIS and 492A reports would not relieve it of any "burden" to compile these data. Rather, it would simply deprive the Commission and other interested parties - carriers or consumers - of access to information needed to evaluate the reasonableness of Qwest's rates, the quality of its services and the appropriateness of its investments.

Granting Qwest's forbearance petition from these reporting requirements would do little to promote competition and may, in fact, lead to decreases in investment and innovation as well as deteriorations in service quality that will no longer be able to be discerned or documented. Thus, a grant of forbearance under these circumstances would be contrary to the public interest.

IV. CONCLUSION

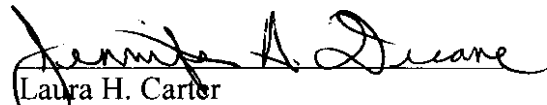
For the foregoing reasons, Sprint Nextel urges the Commission to deny Qwest's Petition for Forbearance from critical ARMIS and 492A reporting requirements. Qwest fails to provide adequate evidence that forbearance would be consistent with each

⁶⁷ Qwest Petition at 14-15.

element of the statutory forbearance standard.⁶⁸ The Commission cannot, based on the record in this docket, grant Qwest's petition for forbearance from these important regulatory obligations.

Respectfully submitted,

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⁶⁸ 47 U.S.C. § 160(a).